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Letter dated 18 June 2010 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General

I have the honour to inform you that during the presidency of Mexico, the Security Council is scheduled to hold an open debate on the subject "The promotion and strengthening of the rule of law in the maintenance of international peace and security" on Tuesday, 29 June 2010.

Mexico has prepared the attached concept note to help guide the discussion on this subject (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

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Annex to the letter dated 18 June 2010 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General

Concept note for the open thematic debate in the Security Council to be held on 29 June 2010 under the presidency of Mexico, on the promotion and strengthening of the rule of law in the maintenance of international peace and security

The rule of law occupies a pivotal position in the work of the United Nations and has become increasingly crucial in the maintenance of international peace and security. As the 2005 World Summit Outcome (resolution 60/1) underlines, an international order based on the rule of law and international law is essential for peaceful coexistence and cooperation among States.

Four years ago, in June 2006, the Security Council held its most recent open debate on the rule of law, under the presidency of Denmark. Recognizing the important role of the General Assembly in the progressive development of international law, the overall goal of the debate was to consider the Security Council's particular role in the promotion of international law, including the legal tools applied by the Council in its endeavours to maintain peace and security (see the discussion paper contained in document S/2006/367). It was further acknowledged that the Security Council operated within the framework of international law in all its functions and that, in the light of changing global threats and challenges, the Council had continuously developed and expanded its approach to fulfilling its main task of maintaining international peace and security. It was underlined that the Council had already made a significant contribution to the strengthening of an international order based on legal principles and that the Council had steadily increased its focus on rule-of-law issues in conflict and post-conflict situations, in specific country situations and thematically.

The Council's approach to and role in the promotion and strengthening of the rule of law in the maintenance of international peace and security has undergone important developments in the past four years. Since the previous debate in the Security Council, new institutional arrangements for ensuring the coordination, coherence and quality of the work of the United Nations on the rule of law have also been established. They involve the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit in the Executive Office of the Secretary-General. This is a welcome institutional evolution. Nevertheless, greater use of the existing mechanism to ensure a coordinated and coherent response by the United Nations system should be further encouraged.

Therefore, the Mexican presidency of the Security Council considers that, four years after the last Council debate on the rule of law, it would seem appropriate and useful to take stock of the developments and the activities of the Security Council in this field.

The debate on the promotion and strengthening of the rule of law in the maintenance of international peace and security is aimed at two different but closely interrelated objectives. It refers, on the one hand, to the idea of more strongly embedding the rule of law and international law in the daily work of the Security

Council, which is permeated with new and evolving global challenges and threats, and, on the other, to the notion of increasing the level of adherence to the rule of law and international law. Both components are indispensable in order for the Council to fulfil its primary responsibility.

This theme encompasses a variety of subjects. Taking into account the developments in the Council's work in recent years, it is suggested that the debate focus on the following main topics: (a) the promotion of the rule of law in conflict and post-conflict situations; (b) international justice and the peaceful settlement of disputes; and (c) the efficiency and credibility of sanctions regimes.

1. The promotion of the rule of law in conflict and post-conflict situations

Preventing conflict and post-conflict situations, which give rise to key rule-of-law questions and problems, must continue to be one of the prime objectives of the Organization. The causes of armed conflict must therefore be addressed in a comprehensive manner and on a long-term basis. From this holistic perspective, peacebuilding and post-conflict capacity-building, particularly the reinforcement of civilian capacities in post-conflict societies, are key components of the promotion and strengthening of the rule of law in the maintenance of international peace and security.

The Secretary-General has repeatedly referred to this relationship in very clear terms, as the reports issued in 2004 (S/2004/616) and 2006 (A/61/636-S/2006/980 and Corr.1) demonstrate. Both of them were partly the result of the previous debates on the rule of law held in the Security Council (September 2003, October 2004 and June 2006). However, since the issuance of the 2006 report, the subject has not been discussed in the Council.

Clear progress has been made with regard to the various issues addressed by the Secretary-General in those reports. Security Council mandates refer to rule-of-law and transitional justice issues more frequently; the Peacebuilding Commission and the Peacebuilding Fund are playing an active role in addressing the rule of law as a priority area for peacebuilding. Transitional justice is a complex, multifaceted and interdisciplinary process. The United Nations system as a whole has made considerable progress in implementing joint and integrated security and justice programming in country-specific situations on the Council's agenda. Therefore, an update on the progress made with regard to the substantive themes and recommendations articulated in the 2004 report of the Secretary-General, especially with regard to the enhancement of the rule of law and transitional justice (see S/2004/616, paras. 64 and 65) could prove very useful.

Respect for international humanitarian law is an essential component of the rule of law in conflict situations. Hence, it also plays a crucial role in the maintenance of international peace and security, as highlighted in the Security Council debate held in January 2009 under the auspices of the French presidency on the theme "Maintenance of international peace and security: respect for international humanitarian law" (S/PV.6078). Furthermore, Security Council resolutions on specific country situations as well as on thematic issues have reiterated this link on numerous occasions. The Council has been very active in promoting compliance with the principles and rules of international humanitarian law by the parties to an armed conflict. Major achievements have also been made in recent years in regard to the protection of civilians, in particular women and children, in armed conflict.

What concrete achievements have been made since the last Security Council debate on the rule of law with regard to conflict and post-conflict situations? How much progress has been made with respect to the recommendations of the Secretary-General set out in his 2004 report (S/2004/616), and what concrete measures are still pending in order to better implement those recommendations? How do we further ensure that the promotion of justice and the rule of law, including respect for human rights, is fully integrated into the work of the Security Council in the field of peacekeeping? What progress has been achieved and what further steps are needed with regard to the enhancement of the capacities and coordination of United Nations agencies in the context of rule-of-law activities in the field and at Headquarters? How can we continue to bridge the gap between mandates and the instrumentality of those mandates? What strategies can the Security Council promote in order to strengthen the efficiency of transitional justice processes? How can efforts to enhance the rule of law in post-conflict societies in areas such as law reform and constitution-making be further strengthened? How effectively has the United Nations supported national authorities in forging greater coherence of rule-of-law assistance, and what role can the Peacebuilding Commission play in helping to galvanize support in addressing priority rule-of-law issues? How can the fostering of compliance with international humanitarian law obligations by the Security Council be further promoted?

2. International justice and the peaceful settlement of disputes

The peaceful settlement of disputes, as enshrined in Article 33 of the Charter of the United Nations, is not only one of the main purposes of the Organization but also one of the basic principles of the international legal system. Hence, the commitment to resolve international conflicts through peaceful means and in accordance with international law is to be understood as one of the cornerstones of the notion of the rule of law at the international level. It is, without any doubt, one of its most appealing elements. In this regard, the 2005 World Summit expressly recognized the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work, and called upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute and consider means of strengthening the work of the Court.

The Security Council has contributed to the peaceful settlement of disputes between States in many ways. Throughout its history, it has had recourse to various organs and mechanisms such as good offices and mediation, among others, which have contributed to strengthening the rule of law.

As has been frequently emphasized, many disputes are claims about perceived legal rights, that is, they stem from differences concerning the interpretation of some rule or set of rules of international law. Therefore, the Security Council should further develop its institutional capacity to prevent the outbreak of situations that threaten international peace and security. In particular, it should strive to help the parties to a dispute to resolve it in accordance with the procedures set out in the Charter, emphasizing the recommendation that legal disputes should be referred to the International Court of Justice, as stated in Article 36, paragraph 3, of the Charter. In addition, the Council may further encourage the Secretary-General to increasingly and effectively use all the modalities and diplomatic tools at his disposal under the Charter for the peaceful settlement of disputes between States.

Advisory opinions by the International Court of Justice also contribute significantly to strengthening the rule of law at the international level, as does respect for the Court's decisions, a matter in which the Council is called to play a critical role in accordance with Article 94, paragraph 2, of the Charter.

Other international courts and tribunals, such as the International Tribunal for the Law of the Sea, offer States the possibility of settling their disputes in a specialized forum, which in turn may contribute to the prevention of conflict. Arbitration and other dispute-settlement mechanisms also contribute significantly to this endeavour.

Another essential element in the Security Council's approach to strengthening international justice and the rule of law is to engage in a concerted effort to end impunity. International criminal justice has evolved significantly in recent years. The fight against impunity for the most serious crimes of international concern has been strengthened through the work of the International Criminal Court, ad hoc and mixed tribunals, as well as specialized chambers in national tribunals. The Council has played an instrumental role in promoting and reinforcing their work.

How can recourse by the Security Council to the means of pacific settlement of disputes available under Chapter VI of the Charter be further encouraged? How can the Council further promote the key role of international tribunals in the peaceful settlement of disputes? What progress has been achieved and what further steps are needed in regard to the strengthening of international criminal justice?

3. The efficiency and credibility of sanctions regimes

Security Council sanctions regimes perform a necessary role in the maintenance of international peace and security. They are highly efficient tools for promoting compliance with international law and are indispensable in the international fight against terrorism. Sanctions regimes have experienced a sea change, transitioning from comprehensive to more focused and efficient targeted measures. However, targeted sanctions still raise a number of fundamental concerns in connection to the rule of law and its basic principles, including due process rights with regard to listing and delisting mechanisms. These concerns can undermine the credibility of sanctions regimes and thereby risk weakening their effectiveness. Striking the right balance between efficiency and legitimacy remains the key challenge.

It is only fair to mention, however, that since the 2006 debate, major improvements have been achieved in this area. For example, resolution 1822 (2008) of June 2008 and resolution 1904 (2009) of December 2009 are key developments within the Council's sanctions regime targeting Al-Qaida and the Taliban, and possibly even beyond it. The recent appointment of an ombudsperson and the procedural improvements in the sanctions regime represent major steps towards the respect of due-process guarantees, one of the basic components of the rule of law. This has also contributed positively to the more general goal of ensuring respect for the rule of law, in particular human rights, while countering terrorism.

In what concrete ways do these developments strengthen the Security Council sanctions regimes' legitimacy and overall effectiveness? How can fair and clear procedures in connection with listing and delisting mechanisms be further reinforced so that the actual implementation of sanctions can be more effective? How could the Council better ensure that human rights are protected in the fight against terrorism?